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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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JOHN N. GLOVER

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5662

7590 08/10/2009
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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1797

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DELIVERY MODE

08/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/320,950	Applicant(s) GLOVER, JOHN N.	
	Examiner DAVID L. SORKIN	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59,61-67 and 69-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59,61-67 and 69-95 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 82-88 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement:
3. Regarding claims 82-85, the originally filed application makes no distinction between “sharp” corners and other corners. There is no description of corners being “sharp”.
4. Regarding claims 86-88, the combination of “a central opening extending through the body, and at least three trisoid-shaped openings extending through the body and positioned between the central opening and an outer periphery of the body” was not described in the originally filed application.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 59, 61-67, 69-85, 94 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (US 4,615,796) in view of “CE Refresher: Catalyst Engineering, Part 2” by John Fulton (“Fulton” herein). Regarding claims 59, 78, and 94

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Kramer ('796) discloses a method of fluid distribution in a chemical reactor comprising the steps of providing a layer of a plurality of ceramic filter units (see col. 3, lines 34-40; Figs. 1 and 2); contacting an organic based stream with the layer of the plurality of ceramic filter units and passing the organic-based stream through the layer prior to the organic based feed stream contacting a catalyst bed in the chemical reactor (see col. 2, lines 20-25; Figs. 1 and 2). Kramer ('796) fails to disclose the units having 3 or more passages surrounding a central passage, through which fluid flows (although annular units, including ones with passages are disclosed in Table 1). Fulton teaches cylindrical units having a central opening and four circular/elliptical openings between the central opening and the periphery (see Fig. 1, third column, fifth row). Note: it is considered that the broadest reasonable definition of ellipse includes circles; just as squares are a special type of rectangle, circles are a special type of ellipse. It is considered that it would have been obvious to one of ordinary skill in the art to have shaped the units of Kramer according to the teachings of Fulton, because Kramer explains that alternative unit shapes may be used in the disclosed processes (see Table 2 and col. 4, lines 1-4). Furthermore, Fulton teaches the above-mentioned shape as an alternative to other shapes including spheres (see page 97) and explains that passages in the units can significantly reduce the amount of material needed, while minimizing loss of strength (see pages 97 and 98, Fig. 3). See also the admitted prior art of page 3, lines 7-18 of the instant specification. Regarding claim 61, Kramer ('796) further discloses removing contaminants from a contaminated stream; and providing the contaminated stream to a catalyst bed for further processing in the chemical reactor (see col. 1, lines 52-60; col. 3,

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lines 4-22; Figs. 1 and 2). Regarding claims 62 and 63, because “packing factor” can be set to any value for a given shape unit merely by varying the size of the unit, and Kramer ('796) explains that unit size should be selected according to an expected particle size to be filtered out, it is considered that it would have been obvious to one of ordinary skill in the art to have optimized the packing factor to suit a particular expected contaminate particle size. Further regarding claim 63, Kramer ('796) discloses packing the ceramic filter units in graduated layers into the chemical reactor with each layer having a different packing factor (see examples 1-3). Regarding claim 64, Fulton further teaches units may have a fluted outer periphery (see Fig. 1). Regarding claim 65, Fulton further teaches that units may have a plurality of recessed notches extending inwardly from the outer periphery toward the medial portion of the units (see Fig. 1). Regarding claim 66, in the units taught by Fulton the four openings substantially surround the central opening between the central opening and the outer periphery to thereby define a ring around the central opening (see Fig. 1). Regarding claim 67, Kramer ('796) discloses a method of fluid distribution in a chemical reactor comprising the steps of providing a layer of a plurality of ceramic filter units (see col. 3, lines 34-40; Figs. 1 and 2); contacting an organic based stream with the layer of the plurality of ceramic filter units and passing the organic-based stream through the layer prior to the organic based feed stream contacting a catalyst in the chemical reactor (see col. 2, lines 20-25; Figs. 1 and 2). Kramer ('796) fails to disclose the polygonal units having 3 or more passages surrounding a central passage, through which fluid flows. Fulton teaches units having a central opening and four circular/elliptical openings between the

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central opening and the periphery (see Fig. 1, third column, fifth row). Note: it is considered that the broadest reasonable definition of ellipse includes circles; just as squares are a special type of rectangle, circles are a special type of ellipse. Polygonal units are also taught (see Fig. 1). It is considered that it would have been obvious to one of ordinary skill in the art to have shaped the units of Kramer according to the teachings of Fulton, because Kramer ('796) explains that alternative unit shapes may be used in the disclosed processes (see Table 2 and col. 4, lines 1-4). Furthermore, Fulton teaches the above-mentioned shapes as an alternative to other shapes including spheres (see page 97) and explains that passages in the units can significantly reduce the amount of material needed, while minimizing loss of strength (see pages 97 and 98, Fig. 3). Fulton also notes in the caption of Fig. 1, that the shapes "represent only a few of the almost limitless variety possible". Regarding claim 69, Kramer ('796) further discloses removing contaminants from a contaminated stream; and providing the contaminated stream to a catalyst bed for further processing in the chemical reactor (see col. 1, lines 52-60; col. 3, lines 4-22; Figs. 1 and 2). Regarding claims 70 and 76, Fulton further teaches that units may have a plurality of recessed notches extending inwardly from the outer periphery toward the medial portion of the units (see Fig. 1). Regarding claim 71-75, square and rectangular shapes are disclosed in Fig. 1 of Fulton. It is explained that the size of the units should be selected based upon various economic trade-offs (see pages 98-99). Kramer provides examples of unit sizes being 0.5 inches and other sizes within the claimed ranges (see example 1-3). Also see applicant's admission on page 3, lines 7-10 regarding prior art thickness of "3/8 inch"

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and “approximately 1/8 inch to 1 ¼ inches in diameter”. Regarding claim 77, in the units taught by Fulton the four openings substantially surround the central opening between the central opening and the outer periphery to thereby define a ring around the central opening (see Fig. 1). Regarding claims 79-81, the central opening taught by Fulton is circular (see Fig. 1, third column, fifth row). While the other openings are also circular, there is only a mathematically infinitesimal difference between a circle and a non-circular ellipse. As explained by the Senate upon enacting the 1952 Patent Act in Senate Report No. 1979, 82d Cong., 2d Sess. (1952), “Section 103, for the first time in our statute, provides a condition which exists in the law and has existed for more than 100 years, but only by reason of decisions of the courts. An invention which has been made, and which is new in the sense that the same thing has not been made before, may still not be patentable if the difference between the new thing and what was known before is not considered sufficiently great to warrant a patent.” The mathematically infinitesimal difference between a circle and a non-circular ellipse “is not considered sufficiently great to warrant a patent”. Regarding claims 82-85, Fulton further teaches units with sharp edges as an alternative to units without sharp edges (see Fig. 1). Regarding claim 95, see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts.

7. Claims 59, 61-67, 69-85, 94 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer ('796) in view of Fulton as applied to claims 59, 61-67 and 69-85 above, and further in view of Hung et al. (DE 3,539,195). While it is considered that the broadest reasonable definition of ellipse includes circles, as discussed above,

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to the extent that someone would argue that circles are excluded from the set of ellipses, Hung et al. (DE 3,539,195) is relied upon as establishing the art recognized equivalence of circular and elliptical openings in ceramic units. As explained in pages 8-10, especially lines 6 and 7 of page 9, of the English translation of Hung ('195), elliptical openings are recognized as an alternative to circular openings. It is considered that it would have been obvious to one of ordinary skill in the art to have substituted elliptical holes for the circular holes discussed above, because circular holes and elliptical holes are recognized in the art as alternative for the same purpose according to Hung ('195) pages 8-10, especially lines 6 and 7 of page 9. Regarding claim 95, see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts.

8. Claims 59, 61-67, 69-85, 94 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (US 4,615,796) in view of Fulton and further in view of the admitted prior art of applicant's declaration filed 28 February 2008, which relates to the BT-750. While, as set forth above, it is considered that the claims are obvious over Kramer (US 4,615,796) in view of Fulton alone, the admitted prior art evidences that it was known in the art to include at least four non-circular ellipse shaped openings in a unit, between a central circular opening and a periphery.

9. Claims 86-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (US 4,615,796) in view of "CE Refresher: Catalyst Engineering, Part 2" by John Fulton ("Fulton" herein). Note: the term "trisoid" is understood to be a set of points lying in a plane for each of which the sum of the distances to three given points in said plane

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is equal to a constant, in accordance with "Beyond the Ellipse" cited by applicant 10 September 2001 and "A three-point generalization of the ellipse". Regarding claims 86 and 88-91 Kramer ('796) discloses a method of fluid distribution in a chemical reactor comprising the steps of providing a layer of a plurality of ceramic filter units (see col. 3, lines 34-40; Figs. 1 and 2); contacting an organic based stream with the layer of the plurality of ceramic filter units and passing the organic-based stream through the layer prior to the organic based feed stream contacting a catalyst be in the chemical reactor (see col. 2, lines 20-25; Figs. 1 and 2). Kramer ('796) fails to disclose the units having 3 or more passages surrounding a central passage, through which fluid flows (although annular units, including ones with passages are disclosed in Table 1). Fulton teaches cylindrical units having a central opening and four circular/trisoidal openings between the central opening and the periphery (see Fig. 1, third column, fifth row). Note: it is considered that the broadest reasonable definition of trisoid includes circles; just as squares are a special type of rectangle, circles are a special type of trisoid. See for example the equation below Fig. 2 of "A three-point generalization of the ellipse", when h and a are zero, the equation is a circle. It is considered that it would have been obvious to one of ordinary skill in the art to have shaped the units of Kramer according to the teachings of Fulton, because Kramer explains that alternative unit shapes may be used in the disclosed processes (see Table 2 and col. 4, lines 1-4). Furthermore, Fulton teaches the above-mentioned shape as an alternative to other shapes including spheres (see page 97) and explains that passages in the units can significantly reduce the amount of material needed, while minimizing loss of strength (see pages 97 and 98,

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Fig. 3). See also the admitted prior art of page 3, lines 7-18 of the instant specification. Regarding claim 87, Kramer ('796) discloses a method of fluid distribution in a chemical reactor comprising the steps of providing a layer of a plurality of ceramic filter units (see col. 3, lines 34-40; Figs. 1 and 2); contacting an organic based stream with the layer of the plurality of ceramic filter units and passing the organic-based stream through the layer prior to the organic based feed stream contacting a catalyst be in the chemical reactor (see col. 2, lines 20-25; Figs. 1 and 2). Kramer ('796) fails to disclose polygonal units having 3 or more passages surrounding a central passage, through which fluid flows (although ones with passages are disclosed in Table 1). Fulton teaches cylindrical units having a central opening and four circular/trisoidal openings between the central opening and the periphery (see Fig. 1, third column, fifth row). Note: it is considered that the broadest reasonable definition of trisoids includes circles; just as squares are a special type of rectangle, circles are a special type of trisoid. See for example the equation below Fig. 2 of "A three-point generalization of the ellipse", when h and a are zero, the equation is a circle. Polygonal units are also taught by Fulton (see Fig. 1). It is considered that it would have been obvious to one of ordinary skill in the art to have shaped the units of Kramer according to the teachings of Fulton, because Kramer explains that alternative unit shapes may be used in the disclosed processes (see Table 2 and col. 4, lines 1-4). Furthermore, Fulton teaches the above-mentioned shape as an alternative to other shapes including spheres (see page 97) and explains that passages in the units can significantly reduce the amount of material needed, while minimizing loss of strength (see pages 97 and 98, Fig. 3). Regarding claims 92 and 93,

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see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts.

10. Claims 86-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (US 4,615,796) in view of Fulton and further in view of the admitted prior art of applicant's declaration filed 28 February 2008, which relates to the BT-750. While, as set forth, above it is considered that the claims are obvious over Kramer (US 4,615,796) in view of Fulton alone, the admitted prior art evidences that it was known in the art to include at least four trisoid shaped openings in a unit, between a central circular opening and a periphery.

Response to Arguments and Declaration

11. Applicant testifies that applicant's previous declaration was incorrect, and that the BT-750 unit is not prior art, stating "In view of the fact that the BT-750 $\frac{3}{4}$ " wagon wheel unit was first offered for sale approximately four (4) years after May 29, 1998, the wagon wheel is not 'prior art' ...". However, firstly, there are other ways in which subject matter may be prior art than through offering for sale, such as being known in this country. Secondly, it has been held that admitted prior art can be relied upon for both anticipation and obviousness, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of section 102. See *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed. Cir. 2003) and *Constant v. Advanced Micro-Devices Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988).

12. Applicant explains that the Criterion Top Bed Catalysts and Support document was first filed with the USPTO 11 November 1998, rather the 1999. However, applicant does not state how long applicant was in possession or aware of the document prior to the actual filing of the IDS with the USPTO.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID L. SORKIN whose telephone number is (571)272-1148. The examiner can normally be reached on Mon.-Fri. 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter D. Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797